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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. _____
)	
Plaintiff,)	<u>PLEA AGREEMENT FOR DEFENDANT</u>
)	<u>PETER TAOY</u>
v.)	
)	
PETER TAOY,)	
)	
Defendant.)	
)	
)	

1. This constitutes the plea agreement between PETER TAOY ("defendant") and the United States Attorney's Office for the Central District of California and the Department of Justice, Civil Rights Division (hereinafter collectively referred to "the USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities.

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1 PLEA

2 2. Defendant gives up the right to indictment by a grand
3 jury and agrees to plead guilty to a two-count information in the
4 form attached to this agreement or a substantially similar form.

5 NATURE OF THE OFFENSE

6 3. In order for defendant to be guilty of count one,
7 which charges a violation of Title 18, United States
8 Code, Section 241, the following must be true: (a) Defendant
9 knowingly and willfully entered into a conspiracy with one or
10 more persons to commit the crime charged as the object of the
11 conspiracy, (b) The purpose of the conspiracy was to injure,
12 oppress, threaten or intimidate any person in any State of the
13 United States in the free exercise or enjoyment of any right or
14 privilege secured to such person by the Constitution or laws of
15 the United States, and (c) Defendant willfully conspired to
16 deprive Jeffrey Petri of the right to be free from the
17 deprivation of liberty without due process of law.

18 4. In order for defendant to be guilty of count two, which
19 charges a violation of Title 18, United States Code, Section
20 1001, the following must be true: (a) Defendant made a false
21 statement in a matter within the jurisdiction of the executive,
22 legislative, or judicial branch of the United States government,
23 (b) The defendant acted willfully, that is, deliberately and with
24 knowledge that the statement was untrue, and (c) The statement
25 was material to the activities or decisions of that branch of the
26 United States government.

1 5. Defendant admits that defendant is, in fact, guilty of
2 these offenses as described in counts one and two of the
3 information.

4 PENALTIES AND RESTITUTION

5 6. The statutory maximum sentence that the Court can impose
6 for a violation of Title 18, United States Code, Section 241
7 is: 10 years imprisonment; a three-year period of supervised
8 release; a fine of \$250,000 or twice the gross gain or gross loss
9 resulting from the offense, whichever is greatest; and a
10 mandatory special assessment of \$100. The statutory maximum
11 sentence that the Court can impose for a violation of Title 18,
12 United States Code, Section 1001 is: five years imprisonment; a
13 three-year period of supervised release; a fine of \$250,000 or
14 twice the gross gain or gross loss resulting from the offense,
15 whichever is greatest; and a mandatory special assessment of
16 \$100. Therefore, the total maximum sentence for all offenses to
17 which defendant is pleading guilty is: 15 years imprisonment; a
18 three-year period of supervised release; a fine of \$500,000 or
19 twice the gross gain or gross loss resulting from the offenses,
20 whichever is greatest; and a mandatory special assessment of
21 \$200.

22 7. Supervised release is a period of time following
23 imprisonment during which defendant will be subject to various
24 restrictions and requirements. Defendant understands that if
25 defendant violates one or more of the conditions of any
26 supervised release imposed, defendant may be returned to prison
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1 for all or part of the term of supervised release, which could
2 result in defendant serving a total term of imprisonment greater
3 that the statutory maximum stated above.

4 8. Defendant also understands that, by pleading guilty,
5 defendant may be giving up valuable government benefits and
6 valuable civic rights, such as the right to vote, the right to
7 possess a firearm, the right to hold office, and the right to
8 serve on a jury.

9 9. Defendant further understands that the conviction in
10 this case may subject defendant to various collateral
11 consequences, including but not limited to, deportation,
12 revocation of probation, parole, or supervised release in another
13 case, and suspension or revocation of a professional license.
14 Defendant understands that unanticipated collateral consequences
15 will not serve as grounds to withdraw defendant's guilty plea.

16 10. Defendant understands that defendant will be required
17 to pay full restitution to the victim of the offenses. Defendant
18 agrees that, in return for the USAO's compliance with its
19 obligations under this agreement, the amount of restitution is
20 not restricted to the amounts alleged in the counts to which
21 defendant is pleading guilty and may include losses arising from
22 counts dismissed pursuant to this agreement as well as all
23 relevant conduct in connection with those counts. Defendant
24 further agrees that defendant will not seek the discharge of any
25 restitution obligation, in whole or in part, in any present or
26 future bankruptcy proceeding.

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11. By pleading guilty, defendant gives up the following

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of legal counsel at

trial, including the right to have the Court appoint counsel for defendant for the purpose of representation at trial. (In this regard, defendant understands that, despite his or her plea of guilty, he or she retains the right to be represented by counsel - and, if necessary, to have the court appoint counsel if defendant cannot afford counsel - at every other stage of the proceedings.)

d) The right to be presumed innocent and to have the

burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses

f). The right, if defendant wished, to testify on

defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if

defendant chose not to testify or present evidence, to have that choice not be used against defendant.

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1 By pleading guilty, defendant also gives up any and all
2 rights to pursue any affirmative defenses, Fourth Amendment or
3 Fifth Amendment claims, and other pretrial motions that have been
4 filed or could be filed.

5 SENTENCING FACTORS

6 12. Defendant understands that, absent a finding by a
7 higher court that constitutional considerations render them
8 inapplicable, the Court is required to consider and apply the
9 United States Sentencing Guidelines ("U.S.S.G." or "Sentencing
10 Guidelines") but may depart from those guidelines under some
11 circumstances. Defendant understands that, should a higher court
12 conclude that constitutional considerations render the Sentencing
13 Guidelines inapplicable, the Court may be free to exercise its
14 discretion to impose any sentence up to the maximum set by
15 statute for the crimes of conviction.

16 13. Defendant and the USAO agree and stipulate to the
17 following applicable sentencing guideline factors:

18 Base Offense Level: 12 [U.S.S.G. § 2H1.1(a)(2)]

19 Specific Offense
20 Characteristics:

21 Offense committed
under color of law: +6 [U.S.S.G. 2H1.1(b)(1)]

22 Defendant and the USAO reserve the right to argue that additional
23 specific offense characteristics, adjustments and departures are
24 appropriate.

25 14. There is no agreement as to defendant's criminal
26 history or criminal history category.

1 15. The stipulations in this agreement do not bind either
2 the United States Probation Office or the Court. Both defendant
3 and the USAO are free to: (a) supplement the facts by supplying
4 relevant information to the United States Probation Office and
5 the Court, (b) correct any and all factual misstatements relating
6 to the calculation of the sentence, and (c) argue on appeal and
7 collateral review that the Court's sentencing calculations are
8 not error, although each party agrees to maintain its view that
9 the calculations in paragraph 13 are consistent with the facts of
10 this case.

11 16. With respect to the sentencing guideline factors
12 stipulated to in paragraph 13, to the extent defendant has a
13 right to have the facts used to determine the applicability of
14 those factors charged in the information by a grand jury and
15 found by a jury at trial beyond a reasonable doubt (see Blakely
16 v. Washington, 124 S. Ct. 2531 (June 24, 2004); United States v.
17 Ameline, No. 02-30326 (9th Cir. July 21, 2004)), defendant waives
18 those rights and agrees that the Court may, regardless of the
19 method by which sentence is imposed, rely on these facts at
20 sentencing as if they had been charged in the information and
21 found by a jury at trial beyond a reasonable doubt. Both
22 defendant and the USAO specifically reserve their rights to make
23 any and all other arguments regarding the effect of Blakely on
24 the application and/or constitutional validity of the sentencing
25 guidelines, including the argument that if Blakely applies to the
26 guidelines it renders them inapplicable and leaves the court free
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1 to exercise its discretion to sentence bound only by the
2 statutory maximum.

3 DEFENDANT'S OBLIGATIONS

4 17. Defendant agrees that he or she will:

5 a) Plead guilty as set forth in this agreement.

6 b) Not knowingly and willfully fail to abide by all
7 sentencing stipulations contained in this agreement.

8 c) Not knowingly and willfully fail to: (i) appear as
9 ordered for all court appearances, (ii) surrender as ordered for
10 service of sentence, (iii) obey all conditions of any bond, and
11 (iv) obey any other ongoing court order in this matter.

12 d) Not commit any crime; however, offenses which would
13 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
14 not within the scope of this agreement.

15 e) Not knowingly and willfully fail to be truthful at
16 all times with Pretrial Services, the U.S. Probation Office, and
17 the Court.

18 f) Pay the applicable special assessment[s] at or
19 before the time of sentencing unless defendant lacks the ability
20 to pay.

21 18. Defendant further agrees to cooperate fully with the
22 USAO, the Federal Bureau of Investigation, the Department of
23 Homeland Security - Office of Inspector General, and, as directed
24 by the USAO, any other federal, state, local, or foreign law
25 enforcement agency. This cooperation requires defendant to:

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1 a) Respond truthfully and completely to all questions
2 that may be put to defendant, whether in interviews, before a
3 grand jury, or at any trial or other court proceeding.

4 b) Attend all meetings, grand jury sessions, trials
5 or other proceedings at which defendant's presence is requested
6 by the USAO or compelled by subpoena or court order.

7 c) Produce voluntarily all documents, records, or
8 other tangible evidence relating to matters about which the USAO,
9 or its designee, inquires.

10 d) Act, if requested by the USAO to do so by the
11 USAO, in an undercover capacity to the best of defendant's
12 ability in connection with criminal investigations by federal,
13 state, or local law enforcement authorities, in accordance with
14 the instructions of those law enforcement authorities. Defendant
15 agrees not to act undercover, tape record any conversations, or
16 gather any evidence unless expressly instructed or authorized to
17 do so by federal, state, or local law enforcement authorities.

18 THE USAO'S OBLIGATIONS

19 19. If defendant complies fully with all defendant's
20 obligations under this agreement, the USAO agrees:

21 a) To abide by all sentencing stipulations contained in
22 this agreement.

23 b) At the time of sentencing, provided that defendant
24 demonstrates an acceptance of responsibility for the offenses up
25 to and including the time of sentencing, to recommend a two-level
26 reduction in the applicable sentencing guideline offense level,
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1 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
2 move for an additional one-level reduction if available under
3 that section.

4 c) Not to offer as evidence in its case-in-chief in
5 the above-captioned case or any other prosecution that may be
6 brought against defendant by the USAO, or in connection with any
7 sentencing proceeding in any case that may be brought against
8 defendant by the USAO, any statements made by defendant or
9 documents, records, or tangible evidence provided by defendant
10 pursuant to this agreement or the letter agreement previously
11 entered into by the parties dated September 29, 2004 and signed
12 September 30, 2004 ("the Letter Agreement"). Defendant agrees,
13 however, that the USAO may use such statements, documents,
14 records, and tangible evidence: (1) to obtain and pursue leads to
15 other evidence, which evidence may be used for any purpose,
16 including any prosecution of defendant, (2) to cross-examine
17 defendant should defendant testify, or to rebut any evidence,
18 argument or representations made by defendant or a witness called
19 by defendant in any trial, sentencing hearing, or other court
20 proceeding, and (3) in any prosecution of defendant for false
21 statement, obstruction of justice, or perjury.

22 d) Not to use any information provided by defendant
23 pursuant to this agreement or the Letter Agreements against
24 defendant at sentencing for the purpose of determining the
25 applicable guideline range, including the appropriateness of an
26 upward departure, and to recommend to the Court that such
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1 information not be used in determining the point in the
2 Sentencing Guidelines range at which defendant should be
3 sentenced. Defendant understands, however, that information
4 provided by defendant pursuant to this agreement or the Letter
5 Agreements will be disclosed to the probation office and the
6 Court, and that the Court may use this information for the
7 purposes set forth in U.S.S.G § 1B1.8(b).

8 e) In connection with defendant's sentencing, to
9 bring to the Court's attention the nature and extent of
10 defendant's cooperation.

11 f) If the USAO determines, in its exclusive judgment,
12 that defendant has both complied with his or her obligations
13 under paragraphs 15 and 16 above and provided substantial
14 assistance to law enforcement in the prosecution or investigation
15 of another ("substantial assistance"), to move the Court pursuant
16 to U.S.S.G. § 5K1.1 to impose a sentence below the sentencing
17 range otherwise dictated by the sentencing guidelines.

18 DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

19 20. Defendant understands the following:

20 a) Any knowingly false or misleading statement by
21 defendant will subject defendant to prosecution for false
22 statement, obstruction of justice, and perjury and will
23 constitute a breach by defendant of this agreement.

24 b) Nothing in this agreement requires the USAO or any
25 other prosecuting or law enforcement agency to accept any
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1 cooperation or assistance that defendant may offer, or to use it
2 in any particular way.

3 c) Defendant cannot withdraw defendant's guilty plea
4 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1
5 for a reduced sentence or if the USAO makes such a motion and the
6 Court does not grant it.

7 d) At this time the USAO makes no agreement or
8 representation as to whether any cooperation that defendant has
9 provided or intends to provide constitutes substantial
10 assistance. The decision whether defendant has provided
11 substantial assistance rests solely within the discretion of the
12 USAO.

13 e) The USAO's determination of whether defendant has
14 provided substantial assistance will not depend in any way on
15 whether the government prevails at any trial or court hearing in
16 which defendant testifies.

17 BREACH OF AGREEMENT

18 21. If defendant, at any time between the execution of this
19 agreement and the completion of defendant's cooperation pursuant
20 to the agreement or defendant's sentencing on a non-custodial
21 sentence or surrender for service on a custodial sentence,
22 whichever is later, knowingly violates or fails to perform any of
23 defendant's obligations under this agreement ("a breach"), the
24 USAO may declare this agreement breached. For example, if the
25 defendant knowingly in an interview, before a grand jury, or at
26 trial, falsely accuses another person of criminal conduct or
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1 incrimination, or (2) any claim under the United States
2 Constitution, any statute, Rule 11(f) of the Federal Rules of
3 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
4 any other federal rule, that statements, documents, records,
5 tangible evidence, or information provided by defendant before or
6 after the signing of this agreement, or any leads derived
7 therefrom, should be inadmissible.

8 22. Following a knowing and willful breach of this
9 agreement by defendant, should the USAO elect to pursue any
10 charge that was either dismissed or not filed as a result of this
11 agreement, then:

12 a) Defendant agrees that any applicable statute of
13 limitations is tolled between the date of defendant's signing of
14 this agreement and the commencement of any such prosecution or
15 action.

16 b) Defendant gives up all defenses based on the statute
17 of limitations, any claim of preindictment delay, or any speedy
18 trial claim with respect to any such prosecution, except to the
19 extent that such defenses existed as of the date of defendant's
20 signing of this agreement.

21 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

22 23. Defendant gives up the right to appeal any sentence
23 imposed by the Court, including any order of restitution, and the
24 manner in which the sentence is determined, provided that (a) the
25 sentence is within the statutory maximum specified above and is
26 constitutional, and (b) the Court imposes sentence by applying

1 the guidelines, does not depart upward in offense level or
2 criminal history category, determines that the total offense
3 level is 15 or below, and imposes a sentence within the range
4 corresponding to the determined total offense level and criminal
5 history category. Defendant also gives up any right to bring a
6 post-conviction collateral attack on the convictions or sentence,
7 including any order of restitution, except a post-conviction
8 collateral attack based on a claim of ineffective assistance of
9 counsel, a claim of newly discovered evidence, or an explicitly
10 retroactive change in the applicable Sentencing Guidelines,
11 sentencing statutes, or statutes of conviction. Notwithstanding
12 the foregoing, defendant retains the ability to appeal the amount
13 or terms of any restitution order and the court's determination
14 of defendant's criminal history category and the conditions of
15 supervised release imposed by the court, with the exception of
16 the following: standard conditions set forth in any district
17 court General Orders; the drug testing conditions mandated by 18
18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use
19 conditions authorized by 18 U.S.C. § 3563(b)(7).

20 24. The USAO gives up its right to appeal the Court's
21 Sentencing Guidelines calculations, provided that (a) the Court
22 does not depart downward in offense level or criminal history
23 category (except by a downward departure in offense level
24 pursuant to, and to the extent requested by, the USAO in a motion
25 under U.S.S.G. § 5K1.1) and (b) the Court determines that the
26 total offense level is 15 or above prior to any departure under
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1 one - not the prosecutor, defendant's attorney, or the Court -
2 can make a binding prediction or promise regarding the sentence
3 defendant will receive, except that it will be within the
4 statutory maximum.

5 NO ADDITIONAL AGREEMENTS

6 27. Except as set forth herein, there are no promises,
7 understandings or agreements between the USAO and defendant or
8 defendant's counsel. This agreement supersedes and replaces the
9 Letter Agreements. Nor may any additional agreement,
10 understanding or condition be entered into unless in a writing
11 signed by all parties or on the record in court.

12 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

13 28. The parties agree and stipulate that this Agreement
14 will be considered part of the record of defendant's guilty plea
15 hearing as if the entire Agreement had been read into the record
16 of the proceeding.

17 FACTUAL BASIS

18 29. Defendant and the USAO agree and stipulate to the
19 statement of facts provided below. This statement of facts
20 includes facts sufficient to support a plea of guilty to the
21 charges described in this agreement and to prove beyond a
22 reasonable doubt to a jury the sentencing guideline factors set
23 forth in paragraph 13 above. It is not meant to be a complete
24 recitation of all facts relevant to the underlying criminal
25 conduct or all facts known to defendant that relate to that
26 conduct.

h. When Petri's car came to a stop near the intersection of Green Street and Larkin Street in San Francisco, defendant used his FPS patrol car's bumper to pin Petri's car against a parked car. Other police officers from the San Francisco Police Department arrived at the scene shortly thereafter.

i. Defendant got out of his vehicle and pointed his service firearm at Petri, ordering Petri to get out of Petri's car. Petri did not comply, and instead attempted to free Petri's car from its position. As Petri dislodged Petri's car, defendant was not standing in front of Petri's car, but instead was off to the left-front side of Petri's car. Defendant fired four shots at the left-front wheel well of Petri's car in an effort to prevent Petri's car from escaping. At the time defendant fired, defendant was not in fear for his life and did not perceive himself to be in imminent danger of bodily injury.

j. Defendant caused Petri to be arrested, charged with various crimes, including attempted murder, in violation of 664/187 of the California Penal Code, and taken to jail on those charges. Defendant knew at the time that the facts of the incident did not support an attempted murder charge against Petri.

k. Shortly after the shooting, but before FPS investigators or supervisors arrived at the scene, defendant spoke with FPS officer J.H. about the incident, and told J.H. how

/ / /

they should describe the attempted stop, pursuit, shooting, and arrest.

1. When FPS Special Agent C.J. arrived to investigate the supposed assault by Petri on defendant, defendant falsely told Special Agent C.J. that he saw Petri's car drive slowly past the Federal Building immediately before defendant began pursuing Petri. Defendant also falsely claimed that Petri's car had engaged in suspicious behavior prior to, and during the pursuit. Defendant made these untrue statements because defendant knew he needed a connection to federal property in order to have FPS jurisdiction.

m. Defendant also falsely told Special Agent C.J. that at the time shots were fired, he was in fear for his life and shot at Petri in self-defense.

n. Later that same day, defendant repeated the false statements described in paragraphs l and m, again telling FPS Special Agents C.J. and D.S. that he saw Petri's car drive slowly past the Federal Building immediately prior to defendant initiating defendant's pursuit of Petri's car, and that he fired his weapon in self-defense, while in fear for his life. Defendant knew these statements were false. Defendant also knew that the statements were used to complete a criminal complaint and affidavit, and to charge Petri with a federal crime, that is a violation of 18 U.S.C. § 111(b), Assaulting, Resisting, or Impeding Certain Officers or Employees (Using a Deadly Weapon). Defendant knew the true facts did not support such a charge.

1 o. On or about February 16, 2003, defendant told FPS
2 police officer R.W. that on or about February 15, 2003 he saw
3 Petri's car drive slowly past the Federal Building immediately
4 prior to defendant's pursuit of Petri's car, and that defendant
5 fired shots in self-defense, while in fear for his life.
6 Defendant knew these statements were not true, and knew the
7 statements were used to complete the FPS arrest report for Mr.
8 Petri.

9 p. On or about February 18, 2003, defendant and FPS
10 officer J.H. were present and remained silent at Petri's court
11 appearance at which a United States Magistrate Judge ordered
12 Petri to be detained. Defendant knew that the false statements
13 concerning where the incident began and the justification for
14 firing his weapon were repeated to the Magistrate Judge during
15 this hearing.

16 q. On or about February 18, 2003, defendant told
17 Assistant United States Attorney S.K. that on or about February
18 15, 2003 he had seen Petri's car drive slowly past the federal
19 building immediately prior to defendant's pursuit of Petri's car,
20 and that he fired shots in self-defense, while in fear for his
21 life. Defendant knew these statements were false. FPS Officer
22 J.H. was present when defendant told Assistant United States
23 Attorney S.K. these false statements. J.H. said nothing that
24 contradicted defendant.

25 r. On or about February 20, 2003, defendant told FPS
26 Special Agent D.S. that on or about February 15, 2003 he had seen
27
28

22

1 Petri's car drive slowly past the federal building immediately
2 prior to defendant's pursuit of Petri's car, and that he fired
3 shots in self-defense, while in fear for his life. Defendant
4 knew these statements were false.

5 This agreement is effective upon signature by defendant, an
6 Assistant United States Attorney, and an attorney of the
7 Department of Justice, Civil Rights Division.

8 AGREED AND ACCEPTED

9 UNITED STATES ATTORNEY'S OFFICE
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 DEBRA W. YANG
12 United States Attorney

13 _____
14 DAVID P. VAUGHN
Assistant United States Attorney

Date

15 UNITED STATES DEPARTMENT OF JUSTICE
16 CIVIL RIGHTS DIVISION

17 R. ALEXANDER ACOSTA
Assistant Attorney General

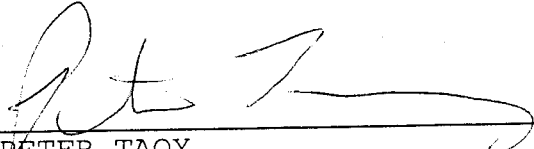
18 _____
19 JERROB DUFFY
20 Trial Attorney

10/19/04

Date

21 I have read this agreement and carefully discussed every
22 part of it with my attorney. I understand the terms of this
23 agreement, and I voluntarily agree to those terms. My attorney
24 has advised me of my rights, of possible defenses, of the
25 Sentencing Guideline provisions, and of the consequences of
26 entering into this agreement. No promises or inducements have
27

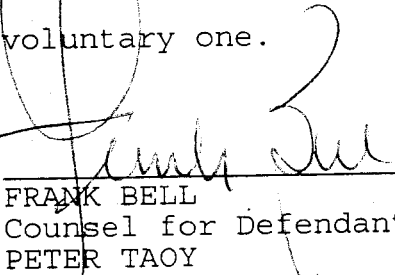
1 been made to me other than those contained in this agreement. No
2 one has threatened or forced me in any way to enter into this
3 agreement. Finally, I am satisfied with the representation of my
4 attorney in this matter.

5
6 
7 _____
8 PETER TAOY
Defendant

10/19/04

Date

9 I am PETER TAOY's attorney. I have carefully discussed
10 every part of this agreement with my client. Further, I have
11 fully advised my client of his/her rights, of possible defenses,
12 of the Sentencing Guidelines' provisions, and of the consequences
13 of entering into this agreement. To my knowledge, my client's
14 decision to enter into this agreement is an informed and
15 voluntary one.

16
17 
18 FRANK BELL
19 Counsel for Defendant
PETER TAOY

10/19/04

Date